

Senate Bill No. 274

CHAPTER 148

An act to amend Sections 4980.10, 4999.47, 4999.54, 4999.102, and 4999.104 of, to add Sections 4989.13, 4991.1, and 4999.13 to, and to repeal Sections 4999.56 and 4999.101 of, the Business and Professions Code, relating to healing arts, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 1, 2011. Filed with
Secretary of State August 1, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

SB 274, Wyland. Healing arts.

Existing law, the Marriage and Family Therapist Act, provides for the licensure and regulation of marriage and family therapists by the Board of Behavioral Sciences. Existing law, the Educational Psychologist Practice Act, provides for the licensure and regulation of educational psychologists by the Board of Behavioral Sciences. Existing law, the Clinical Social Worker Practice Act, provides for the licensure and regulation of social workers by the Board of Behavioral Sciences. Existing law, the Licensed Professional Clinical Counselor Act, provides for the licensure and regulation of professional clinical counselors by the Board of Behavioral Sciences. Existing law authorizes the board to issue a professional clinical counselor license to any person submitting an application between January 1, 2011, and June 30, 2011, if that applicant meets specified requirements, including the requirement that the applicant have at least 2 years of postdegree counseling experience that includes specified hours of experience in a clinical setting supervised by a marriage and family therapist, clinical social worker, psychologist, physician and surgeon specializing in psychiatry, or master's level counselor or therapist, as specified. Existing law makes these licenses valid for 6 years, specifies that such a license expires one year from the date of issuance, and prescribes a specified renewal procedure. Existing law provides that other professional clinical licenses expire no more than 24 months after the date of issuance and may be renewed within 3 years of expiration. Existing law also governs the regulation of clinical counselor trainees and interns. Existing law allows clinical counselor trainees, interns, and applicants to perform services as an employee or as a volunteer, but not as an independent contractor.

This bill would set forth provisions that would provide that a person engages in the practice of marriage and family therapy, educational psychology, clinical social work, or professional clinical counseling when he or she performs or offers to perform or holds himself or herself out as able to perform this service for remuneration in any form, including

donations. The bill would authorize the board to issue a professional clinical counselor license to any person submitting an application between January 1, 2011, and December 31, 2011, if that applicant meets specified requirements, and would add a professional clinical counselor and a person who is licensed out of state to independently practice professional clinical counseling to the list of persons who an applicant may have supervise his or her hours of experience in a clinical setting. The bill would provide that all licenses issued expire no more than 24 months after the issuance date and that all of these licenses would be eligible for renewal within 3 years of expiration. The bill would revise and recast the provision relating to clinical counselor trainees, interns, and applicants, and instead provide that experience shall not be gained by clinical counselor interns or trainees as an independent contractor. The bill would require a clinical counselor intern when applying for licensure as a professional clinical counselor to show proof of his or her employment as an employee or volunteer by providing to the board copies of his or her W-2 tax forms or a letter from an employer verifying employment as a volunteer for each year of experience claimed.

This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 4980.10 of the Business and Professions Code is amended to read:

4980.10. A person engages in the practice of marriage and family therapy when he or she performs or offers to perform or holds himself or herself out as able to perform this service for remuneration in any form, including donations.

SEC. 2. Section 4989.13 is added to the Business and Professions Code, to read:

4989.13. A person engages in the practice of educational psychology when he or she performs or offers to perform or holds himself or herself out as able to perform this service for remuneration in any form, including donations.

SEC. 3. Section 4991.1 is added to the Business and Professions Code, to read:

4991.1. A person engages in the practice of clinical social work when he or she performs or offers to perform or holds himself or herself out as able to perform this service for remuneration in any form, including donations.

SEC. 4. Section 4999.13 is added to the Business and Professions Code, to read:

4999.13. A person engages in the practice of professional clinical counseling when he or she performs or offers to perform or holds himself or herself out as able to perform this service for remuneration in any form, including donations.

SEC. 5. Section 4999.47 of the Business and Professions Code is amended to read:

4999.47. (a) Clinical counselor trainees, interns, and applicants shall perform services as an employee or as a volunteer.

The requirements of this chapter regarding gaining hours of clinical mental health experience and supervision are applicable equally to employees and volunteers. Experience shall not be gained by clinical counselor interns or trainees as an independent contractor.

(1) If employed, a clinical counselor intern shall provide the board with copies of the corresponding W-2 tax forms for each year of experience claimed upon application for licensure as a professional clinical counselor.

(2) If volunteering, a clinical counselor intern shall provide the board with a letter from his or her employer verifying the intern's employment as a volunteer upon application for licensure as a professional clinical counselor.

(b) Clinical counselor trainees, interns, and applicants shall not receive any remuneration from patients or clients, and shall only be paid by their employers.

(c) While an intern may be either a paid employee or a volunteer, employers are encouraged to provide fair remuneration.

(d) Clinical counselor trainees, interns, and applicants who provide voluntary services or other services, and who receive no more than a total, from all work settings, of five hundred dollars (\$500) per month as reimbursement for expenses actually incurred by those clinical counselor trainees, interns, and applicants for services rendered in any lawful work setting other than a private practice shall be considered an employee and not an independent contractor.

(e) The board may audit an intern or applicant who receives reimbursement for expenses and the intern or applicant shall have the burden of demonstrating that the payments received were for reimbursement of expenses actually incurred.

(f) Clinical counselor trainees, interns, and applicants shall only perform services at the place where their employer regularly conducts business and services, which may include other locations, as long as the services are performed under the direction and control of the employer and supervisor in compliance with the laws and regulations pertaining to supervision. Clinical counselor trainees, interns, and applicants shall have no proprietary interest in the employer's business.

(g) Each educational institution preparing applicants for licensure pursuant to this chapter shall consider requiring, and shall encourage, its students to undergo individual, marital or conjoint, family, or group counseling or psychotherapy, as appropriate. Each supervisor shall consider, advise, and encourage his or her interns and clinical counselor trainees regarding the advisability of undertaking individual, marital or conjoint, family, or group counseling or psychotherapy, as appropriate. Insofar as it is deemed appropriate and is desired by the applicant, the educational institution and supervisors are encouraged to assist the applicant in locating that counseling or psychotherapy at a reasonable cost.

SEC. 6. Section 4999.54 of the Business and Professions Code is amended to read:

4999.54. (a) Notwithstanding Section 4999.50, the board may issue a license to any person who submits an application for a license between January 1, 2011, and December 31, 2011, provided that all documentation is submitted within 12 months of the board's evaluation of the application, and provided he or she meets one of the following sets of criteria:

(1) He or she meets all of the following requirements:

(A) Has a master's or doctoral degree from a school, college, or university as specified in Section 4999.32, that is counseling or psychotherapy in content. If the person's degree does not include all the graduate coursework in all nine core content areas as required by paragraph (1) of subdivision (c) of Section 4999.32, a person shall provide documentation that he or she has completed the required coursework prior to licensure pursuant to this chapter. Except as specified in clause (ii), a qualifying degree must include the supervised practicum or field study experience as required in paragraph (3) of subdivision (c) of Section 4999.32.

(i) A counselor educator whose degree contains at least seven of the nine required core content areas shall be given credit for coursework not contained in the degree if the counselor educator provides documentation that he or she has taught the equivalent of the required core content areas in a graduate program in counseling or a related area.

(ii) Degrees issued prior to 1996 shall include a minimum of 30 semester units or 45 quarter units and at least six of the nine required core content areas specified in paragraph (1) of subdivision (c) of Section 4999.32 and three semester units or four and one-half quarter units of supervised practicum or field study experience. The total number of units shall be no less than 48 semester units or 72 quarter units.

(iii) Degrees issued in 1996 and after shall include a minimum of 48 semester units or 72 quarter units and at least seven of the nine core content areas specified in paragraph (1) of subdivision (c) of Section 4999.32.

(B) Has completed all of the coursework or training specified in subdivision (e) of Section 4999.32.

(C) Has at least two years, full-time or the equivalent, of postdegree counseling experience, that includes at least 1,700 hours of experience in a clinical setting supervised by a licensed marriage and family therapist, a licensed clinical social worker, a licensed psychologist, a licensed physician and surgeon specializing in psychiatry, a professional clinical counselor or a person who is licensed in another state to independently practice professional clinical counseling, as defined in Section 4999.20, or a master's level counselor or therapist who is certified by a national certifying or registering organization, including, but not limited to, the National Board for Certified Counselors or the Commission on Rehabilitation Counselor Certification.

(D) Has a passing score on the following examinations:

(i) The National Counselor Examination for Licensure and Certification or the Certified Rehabilitation Counselor Examination.

- (ii) The National Clinical Mental Health Counselor Examination.
- (iii) A California jurisprudence and ethics examination, when developed by the board.

(2) Is currently licensed as a marriage and family therapist in the State of California, meets the coursework requirements described in subparagraph (A) of paragraph (1), and passes the examination described in subdivision (b).

(3) Is currently licensed as a clinical social worker in the State of California, meets the coursework requirements described in subparagraph (A) of paragraph (1), and passes the examination described in subdivision (b).

(b) (1) The board and the Office of Professional Examination Services shall jointly develop an examination on the differences, if any differences exist, between the following:

(A) The practice of professional clinical counseling and the practice of marriage and family therapy.

(B) The practice of professional clinical counseling and the practice of clinical social work.

(2) If the board, in consultation with the Office of Professional Examination Services, determines that an examination is necessary pursuant to this subdivision, an applicant described in paragraphs (2) and (3) of subdivision (a) shall pass the examination as a condition of licensure.

(c) Nothing in this section shall be construed to expand or constrict the scope of practice of professional clinical counseling, as defined in Section 4999.20.

SEC. 7. Section 4999.56 of the Business and Professions Code is repealed.

SEC. 8. Section 4999.101 of the Business and Professions Code is repealed.

SEC. 9. Section 4999.102 of the Business and Professions Code is amended to read:

4999.102. (a) Licenses issued under this chapter shall expire no more than 24 months after the issue date. The expiration date of the original license shall be set by the board.

(b) To renew an unexpired license described in subdivision (a), the licensee, on or before the expiration date of the license, shall do all of the following:

(1) Apply for a renewal on a form prescribed by the board.

(2) Pay a two-year renewal fee prescribed by the board.

(3) Certify compliance with the continuing education requirements set forth in Section 4999.76.

(4) Notify the board whether he or she has been convicted, as defined in Section 490, of a misdemeanor or felony, or whether any disciplinary action has been taken by any regulatory or licensing board in this or any other state, subsequent to the licensee's last renewal.

SEC. 10. Section 4999.104 of the Business and Professions Code is amended to read:

4999.104. Licenses issued under this chapter that have expired may be renewed at any time within three years of expiration. To renew an expired license described in this section, the licensee shall do all of the following:

- (a) File an application for renewal on a form prescribed by the board.
- (b) Pay all fees that would have been paid if the license had not become delinquent.
- (c) Pay all delinquency fees.
- (d) Certify compliance with the continuing education requirements set forth in Section 4999.76.
- (e) Notify the board whether he or she has been convicted, as defined in Section 490, of a misdemeanor or felony, or whether any disciplinary action has been taken by any regulatory or licensing board in this or any other state, subsequent to the licensee's last renewal.

SEC. 11. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make necessary changes to the practices of marriage and family therapy, educational psychology, clinical social work, and professional clinical counseling that are governed by the Board of Behavioral Sciences as soon as possible, including, to ensure that the grandparenting path is still an available option to licensed professional clinical counselor applicants for a six-month time period, and to preserve the intent of Senate Bill 788 (Chapter 619 of the Statutes of 2009) that authorized the licensure of licensed professional clinical counselors, it is necessary for this act to take effect immediately.